

ARKANSAS COURT OF APPEALS  
NOT DESIGNATION FOR PUBLICATION  
TERRY CRABTREE, JUDGE

DIVISION II

CA 06-230

September 20, 2006

ERWIN BRADFORD

APPELLANT

APPEAL FROM THE PULASKI  
COUNTY CIRCUIT COURT  
[NO. JN 05-1917]

V.

ARKANSAS DEPARTMENT OF  
HUMAN SERVICES

APPELLEE

HONORABLE JOYCE WILLIAMS  
WARREN  
JUDGE

AFFIRMED

The appellant, Erwin Bradford, appeals from an order adjudicating his daughter, K.B., as dependent neglected. He contends on appeal that the trial court's finding is not supported by the evidence. Because we are not able to say that the trial court's decision is clearly against the preponderance of the evidence, we affirm.

The four-year-old child involved in this case was taken into emergency custody on September 12, 2005, based on the allegation of the Department of Human Services (DHS) that she was dependent neglected due to sexual abuse. Probable cause was thereafter found, and an adjudication hearing was set for November 9, 2005. The trial court took the issue of dependency neglect under advisement after the hearing. By an order dated November 16,

2005, the trial court adjudicated K.B. as dependent neglected, finding that there was a substantial risk of harm to her as a result of sexual abuse. The adjudication order provided that the child was to remain in the custody of DHS pending the disposition hearing, which was scheduled to be held on November 23, 2005. Appellant brings this appeal from the adjudication order.

As an initial matter, DHS contends that the adjudication order is not one that is subject to an appeal because there had been no disposition hearing. This argument is without merit.

Rule 2(c) of the Rules of Appellate Procedure - Civil provides in pertinent part:

(3) In juvenile cases where an out-of-home placement has been ordered, orders resulting from the hearings set below are final appealable orders:

(A) adjudication and disposition hearings.

This rule clearly provides that an appeal may lie from either adjudication or disposition orders when the child is removed from the home. As this appeal arises from an adjudication order which provides that the child is to remain outside of the home, the appeal is proper.

At the adjudication hearing, Kalisha Hudspeth testified that she had been K.B.'s teacher

at Silver City Head Start at the beginning of the school year in August 2005. She testified that on September 8, 2005, K.B. ran up to her on the playground, that K.B. pulled up her [Ms. Hudspeth's] shirt and began rubbing her inappropriately. Hudspeth received a negative answer from K.B. when asked if anyone had done that to her before. Hudspeth then asked

K.B. what she had done the previous night, and K.B. told her that she had played in the dark.

Hudspeth asked K.B. what she had played with, to which K.B. replied, “my daddy’s dick.” Hudspeth testified that K.B. repeated that statement several times, and then changed the word “dick” to “stick.”

Ms. Hudspeth reported the incident to her supervisor. She said that she had not asked K.B. what a “stick” was. She also testified that K.B. was always dressed appropriately and that she never showed any fear of her father. Hudspeth said that she had transferred to another Head Start program since the incident, but she said that the transfer had nothing to do with this case.

Lenore Paladino, who is with the State Police in the Crimes Against Children Division, investigated the report of suspected abuse. She concluded her investigation with a “true” finding for sexual abuse of K.B. by appellant pursuant to the Child Maltreatment Act. Her interview with K.B. was a factor in making this finding. According to Paladino, K.B. made the spontaneous statement that “my daddy touched my pee-pee with his pee-pee.” Also, when K.B. was talking about her daddy’s “pee-pee,” Paladino asked her if anything came out of it. K.B. responded affirmatively. Paladino asked what color it was, and the child replied that it was white. The child later said that it was orange in color. Paladino said that K.B. did not use either the word “stick” or “dick” during the interview. She also said that it was difficult for the child to focus, which was typical of a four year old. Paladino gave K.B. the Lyon-Sawyer Truth/Lie Assessment and Morality test, which assesses a young child’s ability to tell the

truth. K.B. scored sixty percent on the test, which Paladino said indicated that she understood what telling a lie is and what telling the truth is. She said that this score was compatible with other four year olds whom she had interviewed. She testified that a physical examination of K.B. did not show any sign of abuse.

On cross-examination, Officer Paldino said the K.B. had stated that boys' and girls' pee-pees looked alike. The child also said that she was at the doctor when she had touched her father's pee-pee, and that her father had peed on her hand at the doctor's office. The child also described ejaculate as being green and said that it smelled like "boogers and ice cream." K.B. said that it sounded "like a tree." When asked to draw a picture of her father's pee-pee, K. B. drew a single line on the page. Paladino also testified that she continued to question K.B. after K.B. asked to use the bathroom.

Annie Atkins was the caseworker assigned to this case. She testified that K.B.'s foster parent reported that K.B. was a very active child. There had been reports of K.B. touching herself both at school and in the foster home, and Atkins said that K.B. had not been masturbating as often, however, since they had been teaching her that it was not appropriate. She stated that K.B. was a very affectionate child and that there had been a report that she had run down a hallway to hug a nurse who was not involved in her evaluation. Atkins testified that appellant had complied with court orders and the services that had been provided, and that he had not missed a visit. She was impressed that he usually brings a picnic basket and goodies at visits, as well as clothing. She had not observed any inappropriate behavior

exhibited by appellant during the visits, and she did not feel that he was a threat to the child.

Appellant testified that K.B. was the natural child of his sister, a drug addict, and that he adopted K.B. when she was an infant. He said that K.B. was hyperactive, as a result of having drugs in her system when she was born. He said that she was also a very affectionate child who likes to be loved. He said that he had seen K.B. pull up other peoples' shirts and that he had been trying to correct that behavior. He felt that Ms. Hudspeth had misunderstood K.B.'s actions because she had not been around K.B. for very long. He believed that the incident had been blown out of proportion.

Appellant stated that he was not a pedophile and that he would not hurt his child. He said that he had never referred to his genitalia as a "dick" and that he did not know where she had heard that word. He stated that he had not seen K.B. touch herself inappropriately. Appellant said that the taped interview of the child was ridiculous and that K.B. did not know how to respond to the questions she was being asked. He testified that sometimes her answers were not responsive to the questions she had been asked.

Vivian Bell testified that she had been romantically involved with appellant for six years and that K.B. called her "mommy," as she was the only mother K.B. had known. She said that K.B. was an unusually hyper child because K.B.'s natural mother was using crack cocaine during her pregnancy. She said that she did not sleep over at appellant's house but that he had spent the night at her house. Ms. Bell testified that K.B. was spoiled and that she loves her daddy. It was her opinion that appellant was a good father and that she had never

seen him touch K.B. inappropriately. She said that K.B. had never appeared to be afraid of her father. Ms. Bell testified that K.B. hugs people a lot because her family does a lot of hugging. She had not seen K.B. touch herself and said that no teacher had complained of K.B. touching herself. She, too, thought that the taped interview of K.B. was ridiculous. She said K.B. had a low concentration span and that in conversing with her “she’ll just go all over the board.” She did not believe that appellant could have done anything to harm the child.

Robert Williams testified that he owned R&R Day Care which K.B. had attended in 2003-2004. He said that K.B. was a hyper child which he said was normal for a child of that age. He said that she got along well with other children, that she was happy, and that she was not fearful of her father. No teacher had complained of any unusual behavior. Mr. Williams felt that appellant was a great father. He said that K.B. liked to hug people a lot, which was how she showed affection for others.

The trial court found that K.B. was dependent neglected as a result of sexual abuse. Specifically, the trial court found:

The child made a spontaneous statement during questioning that her daddy touched her pee-pee with his pee-pee. She also described ejaculation, saying that her daddy had peed on her hand and it was white. She later said it was orange and green. The Court is mindful of the likelihood of confusion or inability to recount details such as location of events or sequence of events and the difficulty in eliciting factual recollection from questioning of a child of 4 yrs. and 5 mos. of age. There was testimony that she has touched females in an inappropriate manner on several occasions and that she touches herself often as a means of comfort. Standing alone, masturbation would not be indicative of sexual abuse. However, the totality of the facts

presented leaves the Court with a firm conviction that the agency has proven by a preponderance of the evidence that [K.B.] has been a victim of sexual abuse.

On appeal from a trial court's ruling in a dependency-neglect case, we will not reverse the trial court's findings unless they are clearly erroneous, giving due regard to the trial court's opportunity to judge the credibility of the witnesses. *Arkansas Dep't of Human Services v. McDonald*, 80 Ark. App. 104, 91 S.W.3d 536 (2002). A finding is clearly erroneous when, although there is evidence to support the finding, after reviewing all of the evidence the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id.*

Appellant contends that the trial court's decision is clearly erroneous because there is no credible evidence to support it. He contends that Ms. Hudspeth's testimony was flawed because she did not clarify what K.B. meant when she used the words "dick" and "stick." Appellant also contends that Officer Paladino's interview of the child revealed conflicting and inconsistent answers and statements, and he is critical of her failure to allow K.B. a restroom break. Appellant also points to the supportive testimony of Ms. Atkins and Mr. Williams, as well as his own testimony explaining his child's behavior and denying that he sexually abused her.

Although the evidence in this case does give us pause, we are not able to conclude that the trial court's decision is clearly erroneous. There was evidence that the child pulled up a teacher's shirt and rubbed her inappropriately and that this behavior was not an isolated

incident. There was further testimony that the child continually touched herself in an inappropriate manner. The child also stated that she had played with her father's "dick" or "stick" in the dark, and she spoke of genital-to-genital contact with her father. She also described ejaculation. Giving due deference to the trial court's ability to assess the credibility of the witnesses, we are not willing to disturb the trial court's decision.

Affirmed.

ROBBINS and GRIFFEN, JJ., agree.